

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HENDERSON BUTLER,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO. 04-10761-RWZ

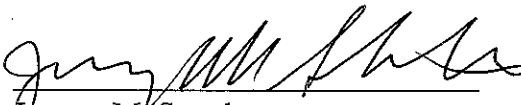
NOTICE OF FILING

PLEASE TAKE NOTICE that on this day the original certified or attested copies of the state court pleadings received from the Clerk of the Suffolk Superior Court, were filed with the United States District Court.

Respectfully submitted,

MICHAEL J. SULLIVAN
UNITED STATES ATTORNEY

By:



Jeremy M. Sternberg
Assistant U.S. Attorney
One Courthouse Way, Suite 9200
Boston, MA 02210
Tel: (617) 748-3142

Dated: 4-22-04

Certificate of Service

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each. Other party by mail/hand on

4-22-04
DATE


Assistant U.S. Attorney

Suffolk Superior Civil # 03-5852

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

COPY

HENDERSON BUTLER,

Plaintiff,

v.

MAKOTO NAGOSHI, M.D. and
JONATHAN GORDON, M.D.,

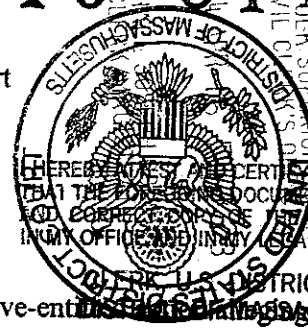
Defendants.

CIVIL ACTION NO. _____

04 10761 RWZ

) Formerly Civil No. 03-5852
) Suffolk County Superior Court
)

NOTICE OF REMOVAL



The United States of America, the proper defendant in the above-entitled case, hereby certifies that the following is a true and correct copy of the original on file in my office and in my legal custody:

BY: *[Signature]*

negligence by two doctors employed by the Department of Veterans Affairs ("VA") during an April 27, 1999 medical procedure at the VA Hospital in West Roxbury, Massachusetts, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, respectfully states as follows:

1. Two employees of the VA, a federal agency, have been named as defendants in a civil action alleging medical malpractice arising out of an April 27, 1999 medical procedure at the VA Hospital in West Roxbury, Massachusetts now pending in the Commonwealth of Massachusetts Superior Court, entitled Butler v. Nagoshi, et al., Civil Action No. 03-5852. The employees were working within the scope of their VA employment at all relevant times. See Certification filed herewith.
2. The action is removable to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. §§ 1441, 1442 and/or 1446.
3. The removal of this action is timely under the provisions of 28 U.S.C. § 2679(d)(2), which

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT

Case Summary
Civil Docket

04/16/2004
02:59 PM

SUCV2003-05852
Butler v Nagoshi MD et al

Date	Paper	Text
		review
04/16/2004		Certified copy of petition for removal to U. S. Dist.Court of Defts. Makota Nagoshi M. D. and Jonathan Gordon M. D. U. S. Dist.#(04-10761RWZ).
04/16/2004		Case REMOVED this date to US District Court of Massachusetts

EVENTS

. HEREBY ATTEST AND CERTIFY ON

APRIL 20, 2004, THAT THE

FOREGOING DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY: 

ASSISTANT CLERK.

MALPRACTICE

1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.

HENDERSON BUTLER,)
)
Plaintiff,)
)
v.)
)
)
)
MAKOTO NAGOSHI, MD and)
JONATHAN GORDON, MD)
)
)
Defendants.)

03-585273
SUFFOLK SUPERIOR COURT
CIVIL CLERKS OFFICE
JUL 12 10 27
MAIL JOSEPH BORDO
CLERK/MAGISTRATE

COMPLAINT AND JURY DEMAND

PARTIES

1.

Plaintiff Henderson Butler is an individual residing at 15 West Tremlet Street, Dorchester, Suffolk County, Massachusetts.

2.

Based upon information and belief, Defendant Jonathan Gordon, is an individual licensed to practice medicine in the Commonwealth of Massachusetts, holding himself out to be a specialist in general and vascular surgery whose usual place of business is 43 Village Square, Chelmsford, Middlesex County, Massachusetts.

3.

Based upon information and belief, Makoto Nagoshi, MD is an individual licensed to practice medicine in the Commonwealth of Massachusetts, holding himself out to be a

specialist in anesthesiology whose usual place of business is 736 Cambridge Street, Brighton, Suffolk County, Massachusetts.

COUNT I

(Negligence-David Arndt, M.D.)

4.

Plaintiff repeats, restates and incorporates those allegations contained in paragraphs one (1) through three (3) as if fully set forth in their entirety.

5.

Plaintiff, Henderson Butler, was an individual who came under the care and treatment of defendant Jonathan Gordon, M.D. for a ventral hernia repair on April 27, 1999 performed at the Veteran's Administration Hospital in West Roxbury, Massachusetts.

6.

A doctor-patient relationship was established between plaintiff and defendant Gordon.

7.

Subsequently, the defendant, Dr. Gordon, M.D., by himself or through his employees, agents and/or servants, negligently provided medical services to plaintiff during the hernia repair, which plaintiff had no reason to know occurred until December 12, 2000.

8.

Defendant, Jonathan Gordon, M.D. failed to meet the applicable standard of care in his follow-up treatment of

plaintiff by failing to discover his negligence and by doing so caused further injury.

9.

As a direct and proximate result of defendant, Jonathan Gordon, M.D.'s acts of negligence, plaintiff has suffered and will continue to suffer great pain of body and anguish of mind; his ability to work, to earn income and to perform his usual activities has been restricted; his health has been impaired; he has been required to spend sums of money for continued medical care and treatment; and his ability to enjoy a normal life has been adversely affected.

WHEREFORE, the plaintiff, Henderson Butler demands judgment against defendant Jonathan Gordon, M.D. in an amount to be shown at trial for the serious injuries plaintiff sustained as a result of defendant's negligence, plus interest, costs and reasonable attorney's fees.

COUNT II

(Breach of Duty-Jonathan Gordon, M.D.)

10.

Plaintiff repeats, restates and incorporates by reference those allegations contained in paragraphs one (1) through three (3), and paragraphs four (4) through nine (9) of Count I as if fully set forth in their entirety.

11.

Plaintiff, Henderson Butler, was an individual who came under the care and treatment of defendant Jonathan Gordon,

M.D. for hernia repair surgery on April 27, 1999 performed at the Veteran's Administration Hospital in West Roxbury, Massachusetts.

12.

Defendant Gordon, as a general and vascular surgeon had a duty to plaintiff to utilize those skills, procedures and practices that another orthopedic surgeon in like circumstances would utilize in a hernia repair surgery.

13.

A doctor-patient relationship was established between plaintiff and defendant Gordon.

14.

Defendant, Jonathan Gordon, M.D., by himself or through his employees, agents and/or servants, breached his duty of care by negligently providing medical services to plaintiff during the ventral hernia repair.

15.

Defendant, Jonathan Gordon, M.D. failed to meet the applicable standard of care in his follow-up treatment of plaintiff by failing to discover the negligence and by doing so caused further injury, providing plaintiff with no reason to know either a breach of duty or negligence occurred until December 12, 2000.

16.

As a direct and proximate result of defendant, Jonathan Gordon M.D.'s negligence and breach of duty, plaintiff has suffered and will continue to suffer great pain of body and

anguish of mind; his ability to work, to earn income and to perform his usual activities has been restricted; his health has been impaired; he has been required to spend sums of money for continued medical care and treatment; he has been required to spend sums of money for continued medical care and treatment; and his ability to enjoy a normal life has been adversely affected.

WHEREFORE, the plaintiff, Henderson Butler demands judgment against defendant Jonathan Gordon, M.D. in an amount to be shown at trial for the serious injuries plaintiff sustained as a result of defendant's negligence, plus interest, costs and reasonable attorney's fees.

Count III

(Negligence -Makoto Nagoshi, M.D.)

17.

Plaintiff repeats, restates and incorporates by reference those allegations contained in paragraphs one (1) through four (4), paragraphs five (5) through nine (9) of Count I, and paragraphs ten (10) through sixteen (16) of Count II as if fully set forth in their entirety.

18.

Plaintiff, Henderson Butler, was an individual who came under the care and treatment of defendant Makoto Nagoshi, M.D. for a ventral hernia repair on April 27, 1999 performed at the Veteran's Administration Hospital in West Roxbury, Massachusetts.

19.

A doctor-patient relationship was established between plaintiff and defendant Gordon.

20.

Subsequently, the defendant, Dr. Nagoshi, M.D., by himself or through his employees, agents and/or servants, negligently provided medical services to plaintiff during the hernia repair, which plaintiff had no reason to know occurred until December 12, 2000.

21.

Defendant, Makoto Nagoshi, M.D. failed to meet the applicable standard of care in his follow-up treatment of plaintiff by failing to discover his negligence and by doing so caused further injury.

22.

As a direct and proximate result of defendant, Makoto Nagoshi's, M.D.'s acts of negligence, plaintiff has suffered and will continue to suffer great pain of body and anguish of mind; his ability to work, to earn income and to perform his usual activities has been restricted; his health has been impaired; he has been required to spend sums of money for continued medical care and treatment; and his ability to enjoy a normal life has been adversely affected.

WHEREFORE, the plaintiff, Henderson Butler demands judgment against defendant Makoto Nagoshi, M.D. in an amount to be shown at trial for the serious injuries plaintiff

sustained as a result of defendant's negligence, plus interest, costs and reasonable attorney's fees.

COUNT IV

(Breach of Duty-Makoto Nagoshi, M.D.)

23.

Plaintiff repeats, restates and incorporates by reference those allegations contained in paragraphs one (1) through four (4), paragraphs five (5) through nine (9) of Count I, paragraphs ten (10) through sixteen (16) of Count II, and paragraphs seventeen (17) through twenty-two (22) of Count IV as if fully set forth in their entirety.

24.

Plaintiff, Henderson Butler, was an individual who came under the care and treatment of defendant Makoto Nagoshi, M.D. for hernia repair surgery on April 27, 1999 performed at the Veteran's Administration in West Roxbury, Massachusetts.

25.

Defendant Nagoshi, as an anesthesiologist had a duty to plaintiff to utilize those skills, procedures and practices that another anesthesiologist in like circumstances would utilize in a hernia repair surgery.

26.

A doctor-patient relationship was established between plaintiff and defendant Nagoshi.

27.

Defendant, Makoto Nagoshi, M.D., by himself or through his employees, agents and/or servants, breached his duty of

care by negligently providing medical services to plaintiff during the ventral hernia repair.

28.

Defendant, Makoto Nagoshi, M.D. failed to meet the applicable standard of care in his follow-up treatment of plaintiff by failing to discover the negligence and by doing so caused further injury, providing plaintiff with no reason to know either a breach of duty or negligence occurred until December 12, 2000.

29.

As a direct and proximate result of defendant, Makoto Nagoshi, M.D.'s negligence and breach of duty, plaintiff has suffered and will continue to suffer great pain of body and anguish of mind; his ability to work, to earn income and to perform his usual activities has been restricted; his health has been impaired; he has been required to spend sums of money for continued medical care and treatment; he has been required to spend sums of money for continued medical care and treatment; and his ability to enjoy a normal life has been adversely affected.

WHEREFORE, the plaintiff, Henderson Butler demands judgment against defendant Makoto Nagoshi, M.D. in an amount to be shown at trial for the serious injuries plaintiff sustained as a result of defendant's negligence, plus interest, costs and reasonable attorney's fees.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS

Respectfully submitted,

Henderson Butler
By his attorney
LAW OFFICES OF JEFFREY S. GLASSMAN, L.L.P.



NEIL S. COHEN, ESQ.
BBO NO. 561173
One Beacon Street, Suite 3333
Boston, MA 02108
(617) 367-2900

Dated:

12/12/03

HEREBY ATTEST AND CERTIFY ON
APRIL 20, 2004, THAT THE

FOREGOING DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY 

ASSISTANT CLERK.

AOTC-6 mtc005-11/99
A.O.S.C. 1-2000

APRIL 20, 2004, THAT THE
 FOREGOING DOCUMENT IS A FULL,
 TRUE AND CORRECT COPY OF THE
 ORIGINAL ON FILE IN MY OFFICE,
 AND IN MY LEGAL CUSTODY.

DEPARTMENT OF THE TRIAL COURT
BY: Nancy C. Blach
ASSISTANT CLERK.

NOTIFY 3.16 3.15 3

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.03-5852-B

HENDERSON BUTLER,

Plaintiff,

v.

JONATHAN GORDON, MD and
MAKOTO NAGOSHI, MD,

Defendants.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2004 MAR 10 P 2:25
MICHAEL JUSTIN DONOVAN
CLERK/MAGISTRATE

PLAINTIFF'S EMERGENCY MOTION
TO ENLARGE TIME TO PERFECT SERVICE

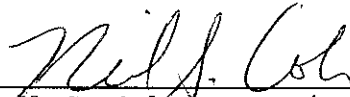
Now comes the Plaintiff in the above-captioned civil action and hereby files his motion to enlarge the time to perfect service of the Complaint on the Defendant, Makoto Nagoshi, M.D. for the following reasons:

1. Plaintiff has had difficulty in locating Defendant, Makoto Nagoshi, M.D., in order to serve him with the Complaint.
2. Plaintiff has attempted to serve the Defendant, Makoto Nagoshi, M.D., at his last known business address in Suffolk County which resulted in a return of "diligent search" and information that said Defendant is now residing in the State of California.

Allowed. 3/15/04.
[Signature]

WHEREFORE, plaintiff requests enlargement of the time of ninety (90) days to perfect service of the Complaint on the Defendant, Makoto Nagoshi, M.D.

Respectfully submitted,
By plaintiff's attorney
LAW OFFICES OF JEFFREY S. GLASSMAN, LLP



Neil S. Cohen, Esquire
BBO # 561173
One Beacon Street, Suite 3333
Boston, MA 02108
(617) 367-2900

Dated: 3/10/04

HEREBY ATTEST AND CERTIFY ON

APRIL 20, 2004, THAT THE
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AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY 

ASSISTANT CLERK.

CERTIFICATE OF SERVICE

I, Neil S. Cohen, counsel for the Plaintiff, do hereby certify that I served the foregoing Plaintiff's Motion to Enlarge Time on all counsel of record and non-represented parties by United States First Class mail, postage prepaid to: Jonathan Gordon, M. D., 43 Village Square, Chelmsford, MA 01824.

This 10 day of March, 2004.


Neil S. Cohen, Esquire

Commonwealth of Massachusetts

SUFFOLK, ss.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

2004 MAR 16 P 12:33

MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATESUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION

No. 03-5852

Henderson Butler, Plaintiff(s)

v.

Makoto Nagoshi, M.D. and
Jonathan Gordon, M.D., Defendant(s)

SUMMONS

To the above-named Defendant: Jonathan Gordon, M.D.

You are hereby summoned and required to serve upon Neil S. Cohen, Esquire
Law Offices of Jeffrey S. Glassman, L.L.P.
plaintiff's attorney, whose address is 1 Beacon St., Ste. 3333, Boston, MA, an answer to
the complaint which is herewith served upon you, within 20 days after service of this summons upon you,
exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the
relief demanded in the complaint. You are also required to file your answer to the complaint in the office
of the Clerk of this court at Boston either before service upon plaintiff's attorney or within a reasonable
time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject
matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DeVecchio, Esquire, at Boston, the FOURTH day of
MARCH, in the year of our Lord two thousand FOUR.

Clerk/Magistrate

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. TO PLAINTIFF'S ATTORNEY, PLEASE CIRCLE TYPE OF ACTION INVOLVED
(1) TORT (2) MOTOR VEHICLE TORT (3) CONTRACT (4) EQUITABLE RELIEF (5) OTHER

FORM CIV.P. 1 3rd Rev. 30M 10/2000

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MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY

ASSISTANT CLERK.

NOTICE TO DEFENDANT: You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.